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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 1033

THOMAS H. BROOKS AND AUGUST J. MAUREAU, JR.,
Petitioners,

vs.

THE UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Opinion below	1
Jurisdiction	2
Summary statement of matter involved	3
Reasons relied on for allowance of writ	4
Argument	4
Transcript annexed	9
Conclusion	9
Appendix—The judgment of the Circuit Court of Appeals	11

Table of Cases Cited

Chantay v. United States, 284 F. 537, 4th Cir. (1922)	6
Lisse v. United States, 49 F. (2d) 241	7
Polk v. United States, 156 F. (2d) 852 (10th Cir.) (1946)	6
Rich v. United States, 106 Ga. 354 (1898), 32 S.E. 804	6
Ross v. United States, 90 F. (2d) 864	6
United States v. Wood, 108 F. (2d) 234	6
United States v. Wurdeman, 90 F. (2d) 687	6

Statutes and Authorities Cited

U. S. Code, Title 18:

Section 1621 4

U. S. Code Ann., Title 28:

Section 1254 (1) 2

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Thomas H. Brooks and August J. Maureau, Jr., citizens of the United States, domiciled in the State of Louisiana, respectfully bring this, their application for Writs of Certiorari, to review the final judgment of the United States Circuit Court of Appeals for the Fifth Circuit in this Criminal Case.

Opinion Below

Petitioners were convicted on April 5, 1957, in the United States District Court, for the Eastern District of Louisiana, of violating Title 18 Section 1621 U.S.C.—Perjury.

Thomas H. Brooks, was found guilty on counts two (2) and three (3) of an original four (4) count Indictment. Sentence was imposed on May 15, 1957, petitioner, being condemned to serve eighteen (18) months in a Penal Institution of the United States on count two (2) and eighteen (18) months on count three (3) the sentence on count three (3) to run concurrently with the sentence imposed on count two (2).

August J. Maureau, Jr., was found guilty on counts one (1), two (2), and three (3) of an original four (4) count Indictment.

Sentence was imposed on May 15, 1957, petitioner, being condemned to serve eighteen (18) months in a Penal Institution of the United States, on counts one (1), two (2) and three (3) the sentence on counts two (2) and three (3) to run concurrently with the sentence imposed on count one (1).

Petitioners, thereupon, took their appeal to the United States Circuit Court of Appeals for the Fifth Circuit, where judgment was rendered affirming their conviction on March 18, 1958.

Petitioners, within the delays allowed, filed their petition for a rehearing in the said United States Circuit Court of Appeals for the Fifth Circuit, which petition for rehearing was denied on May 7, 1958, with no written opinion rendered.

On May 9, 1958, a stay of mandate was ordered by the said United States Circuit Court of Appeals for the Fifth Circuit, for a period of thirty (30) days, from May 7, 1958, to enable petitioners to apply to this Honorable Court for Writs of Certiorari to review said final judgment of the United States Circuit Court of Appeals for the Fifth Circuit.

Jurisdiction

Jurisdiction of this Honorable Court is invoked under paragraph (1) Section 1254 Title 28, U.S.C.A., making it competent for this Honorable Court to review by certiorari any case, civil or criminal, in a Circuit Court of Appeals, and the application is made within 30 days after entry of judgment, (denial of Rehearing), as required by Rule 22 of this Honorable Court, effective July 1, 1954, and in the manner required by Rule 21 of this Honorable Court.

Summary Statement of Matter Involved

Your petitioners, Thomas H. Brooks and August J. Maureau, Jr., members of the New Orleans Police Department, were indicted, separate indictments, dated September 13, 1955, and returned by a Grand Jury empaneled and duly qualified in the Eastern District of Louisiana.

There were four (4) counts to each indictment. Both defendants were found not guilty on count four (4) of each indictment but were found Guilty on counts one (1), two (2) and three (3) of the respective indictments.

On June 26, 1956, the District Court, sentenced each defendant to serve eighteen (18) months on each count, the sentence on counts two (2) and three (3) to run concurrently with the sentence on count one (1).

From said verdict and sentence, petitioners filed an appeal to the United States Circuit Court of Appeals, Fifth Circuit. On January 31, 1957, after a hearing, the said United States Circuit Court of Appeals, Fifth Circuit, reversed the Judgment of conviction of the District Court, and remanded the matters to the District Court for a new trial.

On April 5, 1957, petitioners were re-tried on counts one, two and three of each indictment and Thomas H.

Brooks was found not guilty on count one and guilty on counts two and three.

August J. Maureau, Jr., was found guilty on all three counts of the indictment against him.

In each count of each indictment, petitioners were charged with Perjury, allegedly committed before the Special Agents of the New Orleans District of the Intelligence Division of the Internal Revenue Service of the United States Department of the Treasury, which was then and there investigating the income tax returns of certain high Police Officials of the New Orleans Police Department and of one, Lionel Andrew Dominguez.

The income tax returns of the two petitioners were not under investigation.

Reasons Relied on for Allowance of Writ

The reasons relied on for the allowance of Writs of Certiorari are:

(1) The alleged false statements must be material to the issues under investigation to sustain a conviction for perjury.

(2) The trial Judge mingled the duty of the Court and Jury, leaving to the Jury no discretion but to obey the direction of the Court, when he charged the Jury that the questions and the answers which each defendant gave, and which answers are the basis upon which each count is based, were material, relevant, competent and pertinent to the investigation.

Argument

Point I

It is the contention of Petitioners that the alleged false statements were not material to the investigation being

carried on by the Special Agents of the Revenue Service.

The purpose of said investigation was to determine if any of the persons under investigation owed income taxes resulting from concealed income. Petitioners income taxes were not under investigation.

The alleged false statements contained in the Indictment against Thomas H. Brooks were as follows:

COUNT II

That he at no time has been to the residence of Lionel Andrew Dominguez, 1655 North Roman Street, New Orleans, Louisiana.

COUNT III

That he has at no time, while assigned to the Fifth District, New Orleans Police Department, received any envelopes from Lionel Andrew Dominguez.

The alleged false statements contained in the Maureau indictment are as follows:

COUNT I

That he has never driven his private automobile to the address of 1655 North Roman Street, New Orleans, Louisiana, said automobile being described as a Nash automobile bearing 1954 Louisiana License No. 152-004.

COUNT II

That he has never been to the residence of Lionel Andrew Dominguez, 1655 North Roman Street, New Orleans, Louisiana.

COUNT III

That he never accompanied Sgt. Thomas H. Brooks of the New Orleans Police Department to the address 1655 North Roman Street, New Orleans, Louisiana.

The alleged false statements could not of themselves, have been material to the investigation being conducted.

Whether or not they were there, would not in any way establish that the persons under investigations had sources of income which they had not reported.

How could a negative or affirmative answer, have pertained to or in any way impeded or assisted the investigation being conducted?

In order for false testimony to be material to the issues, being investigated, it must pertain to those issues. The essence of perjury is the attempted advantage being sought toward influencing the result.

If the incorrect or alleged false statements, even though willful, cannot affect the issues or result, the statute penalizing perjury does not cover such testimony. *Clayton* v. *United States*, 284 F. 537, 4th Cir. (1922). *Pyle* v. *United States* 156 F. (2d) 852 D.C. (1946).

The prosecution did not introduce any evidence to show how the alleged false statements of petitioners were in any way material to the income tax returns of the persons under investigation.

The materiality of the matter testified to by the defendant upon the issues in the case must be established by evidence and cannot be left to presumption or inference. *Rich* v. *United States*, 1 Okla. 354 (1893) 33 P. 804.

Point II

The Trial Court in its charge (instructions) to the Jary, gave the following charge, in reference to the alleged questions asked and the alleged answers given by the defendant, being material to the issues under investigation by the Special Agents of the Internal Revenue Service.

> "Now it is further incumbent upon the Government to establish beyond a reasonable doubt that the ques-

tions propounded by Agents and answers made by each defendant were material and relevant and competent to the investigation which they were then and there conducting. Now that is a matter of law. I charge you as a matter of law; that means, I do not leave it to you to decide; the Court decides as a matter of law and instructs you that the questions and answers, in each of the two indictments, were competent, material and relevant to the investigation then and there being conducted by the Internal Revenue Agent who was questioning each of the two defendants."

After the Jury retired and had been deliberating on the case for about four hours, they returned into Court for further instructions upon this point, and the following transpired:

Juror:

"Your Honor, I'd like a clarification of one of the points of your charges—your charge to the Jury.

Does the Jury or the Judge have the authority to decide if the sworn statements of the defendants were pertinent to the case which was under investigation by the Special Agents of the Intelligence Division and has the Jury been instructed by the Judge that the information that the Agents were seeking from the defendants was pertinent to the investigation?"

The court:

"Let me answer that."

"I charge you as a matter of law—I'll repeat that portion of the charge. I charge you as a matter of of law, which means, I do not leave it to you to decide but that the Court decides as a matter of law and instructs you, that the questions and answers in

each of the three counts in each of the two indictments, were competent, material, and relevant to the investigation then and there being conducted by the Internal Revenue Agent, who was questioning each of the two defendants.

"So the Court decides as a matter of law and has decided as a matter of law and has decided and so instructs you that the questions and the answers which each defendant gave and which answers are the basis upon which each count is based, were material, relevant, competent and pertinent to the investigation."

It is obvious, that the Trial Court by its instructions, on this point, took away from the Jury, its right to decide what the issues were, that were under investigation by the Special Agents of the Revenue Service.

The defendants in pleading "not guilty" traversed the fact, that the alleged false testimony, alleged to having been given in the investigation, was given at all; and they also traversed the fact, as to what the issues were that were under investigation.

The Trial Court did not attempt to clarify its instructions by telling the Jury, *that they should decide from the evidence what the issues were that were under investigation by the Agents of the Revenue Service* and that they should decide *what answers the defendants gave or if they gave any answers, whatsoever.*

The Trial Court by its instructions decided these facts for the Jury, when it charged the Jury; "So the Court decides as a matter of law and has decided and so instructs you that the questions and the answers which each defendant gave. . . ."

In the matter of *Luse* v. *United States*, 49 F. (2d) 241, it was held:

"In perjury case, plea of not guilty, traversed the fact that the alleged testimony at the former trial was given at all, and it was for the Jury to say whether such testimony was given."

Whether or not the evidence on these points was sufficient to convince the Jury, that the defendants had or had not made the alleged false statements as contained in the indictments, was a matter solely to be decided by the Jury hearing the case and not by the Trial Judge.

It is a rule well settled, that it is peculiarly within the province of the Jury to decide upon the weight and sufficiency of the evidence to establish the facts or issues. *United States* v. *Mann*, 108 F. (2d) 354; *Ryan* v. *United States*, 99 F. (2d) 864; *United States* v. *Morley*, 99 F. (2d) 683.

Transcript Annexed

The record for the use of the Court below having been certified by the clerk of the United States Court of Appeals, Fifth Circuit, is filed herewith.

Conclusion

Wherefore, for the foregoing reasons, petitioners, Thomas H. Brooks and August J. Maureau, Jr., respectfully pray that a Writ of Certiorari issue to the United States Circuit Court of Appeals, for the Fifth Circuit, to the end that this cause may be reviewed and determined by this Honorable Court; and that the Judgment of said United States Circuit Court of Appeals for the Fifth Circuit, may be in due course reversed and set aside, and that Judgment may be rendered in favor of Petitioners, setting aside their convictions and sentence pronounced below and discharging them forthwith; and petitioners

pray for all such further and necessary orders proper in the premises.

And for all such relief as the nature of the case may justify.

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